

112TH CONGRESS
1ST SESSION

H. R. 3130

To ensure that women seeking an abortion receive an ultrasound and an opportunity to review the ultrasound before giving informed consent to receive an abortion.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2011

Mrs. BACHMANN (for herself, Mr. GIBBS, Mr. FRANKS of Arizona, Mr. GOMMERT, Mr. JONES, Mr. HUIZENGA of Michigan, Mr. SMITH of New Jersey, Mr. JOHNSON of Ohio, Mrs. SCHMIDT, Mr. BURTON of Indiana, Mr. AUSTRIA, Mr. KING of Iowa, Mr. MCKINLEY, Mr. BUCSHON, Mr. LAMBORN, Mr. SCALISE, Mr. KELLY, Mr. WESTMORELAND, Mr. BILIRAKIS, Mr. LATTA, Mrs. ELLMERS, Mr. MCCOTTER, Mr. HARRIS, Mr. BRADY of Texas, Mr. LONG, Mr. CRAVAACK, Mr. BOUSTANY, Mr. MILLER of Florida, Mr. PALAZZO, and Mr. FLEMING) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To ensure that women seeking an abortion receive an ultrasound and an opportunity to review the ultrasound before giving informed consent to receive an abortion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Heartbeat Informed
5 Consent Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) The presence of a heartbeat in a woman's
4 unborn child will be a material consideration to
5 many women contemplating abortion.

6 (2) The presence of a heartbeat in a woman's
7 unborn child is a developmental fact that illustrates
8 to the woman that her baby is already alive.

9 (3) On about the 21st or 22nd day after fer-
10 tilization (which is about 5 weeks from the first day
11 of the last menstrual period) the heart of an unborn
12 child begins to beat.

13 (4) The heartbeat of an unborn child can be
14 visually detected at an early stage of pregnancy
15 using an ultrasound machine, typically, at 4 to 4.5
16 weeks after fertilization (6 to 6.5 weeks from the
17 first day of the last menstrual period) on
18 transvaginal ultrasound, and at 5.5 to 6 weeks after
19 fertilization (7.5 to 8 weeks from the first day of the
20 last menstrual period) on transabdominal
21 ultrasound.

22 (5) The heartbeat of an unborn child can be
23 made audible at later stages, including by using a
24 handheld Doppler fetal monitor.

25 (6) Less than five percent of all natural preg-
26 nancies end in spontaneous miscarriage after detec-

1 tion of cardiac activity. A fetal heartbeat is therefore
2 a key medical indicator that an unborn child is likely
3 to achieve the capacity for live birth.

4 (7) The observation of a heartbeat in a wom-
5 an's unborn child, when a heartbeat has been de-
6 tected, is an important component of full informed
7 consent.

8 (8) Ensuring full informed consent for an abor-
9 tion is imperative, because of the profound physical
10 and psychological risks of an abortion. As the Su-
11 preme Court has observed, “[t]he medical, emo-
12 tional, and psychological consequences of an abortion
13 are serious and can be lasting.” *H.L. v. Matheson*,
14 450 U.S. 398, 411 (1981). The woman’s decision
15 whether to abort “is an important, and often a
16 stressful one, and it is desirable and imperative that
17 it be made with full knowledge of its nature and
18 consequences.” *Planned Parenthood v. Danforth*,
19 428 U.S. 52, 67 (1976). “Whether to have an abor-
20 tion requires a difficult and painful moral decision,”
21 in which “some women come to regret their choice
22 to abort the infant life they once created and sus-
23 tained,” and “[s]evere depression and loss of esteem
24 can follow . . . The State has an interest in ensur-
25 ing so grave a choice is well informed. It is self-evi-

1 dent that a mother who comes to regret her choice
2 to abort must struggle with grief more anguished
3 and sorrow more profound when she learns, only
4 after the event, what she once did not know . . .”
5 *Gonzales v. Carhart*, 550 U.S. 124, 159–160
6 (2007).

7 (9) Requiring providers to give a woman an op-
8 portunity to observe her unborn child’s heartbeat is
9 constitutionally permissible, and the ultrasound
10 image of an unborn child is truthful, nonmisleading
11 information. “In attempting to ensure that a woman
12 apprehend the full consequences of her decision, the
13 State furthers the legitimate purpose of reducing the
14 risk that a woman may elect an abortion, only to
15 discover later, with devastating psychological con-
16 sequences, that her decision was not fully informed.
17 If the information the State requires to be made
18 available to the woman is truthful and not mis-
19 leading, the requirement may be permissible.”
20 (Opinion of O’Connor, Kennedy, and Souter,
21 *Planned Parenthood v. Casey*, 505 U.S. 833, 882
22 (1992)).

23 (10) Further, recent research, taking into ac-
24 count 22 studies with control groups and more than
25 877,000 women over a 14-year period, finds that

1 women who have had an abortion have an 81 per-
2 cent increased risk for mental health problems and
3 10 percent of the mental health problems of women
4 who have had an abortion are directly attributed to
5 abortion.

6 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
7 **ACT.**

8 The Public Health Service Act (42 U.S.C. 201 et
9 seq.) is amended by adding at the end the following:

10 **“TITLE XXXIV—INFORMED**
11 **CONSENT**

12 **“SEC. 3401. DEFINITIONS.**

13 “In this title:

14 “(1) ABORTION.—The term ‘abortion’ means
15 the intentional use or prescription of any instru-
16 ment, medicine, drug, or any other substance, de-
17 vice, or method to terminate the life of an unborn
18 child, or to terminate the pregnancy of a woman
19 known to be pregnant, with an intention other
20 than—

21 “(A) to produce a live birth and preserve
22 the life and health of the child after live birth;
23 or

24 “(B) to remove an ectopic pregnancy, or to
25 remove a dead unborn child who died as the re-

1 sult of a spontaneous abortion, accidental trau-
2 ma, or a criminal assault on the pregnant fe-
3 male or her unborn child.

4 “(2) ABORTION PROVIDER.—The term ‘abortion
5 provider’ means any person legally qualified to per-
6 form an abortion under applicable Federal and State
7 laws.

8 “(3) CERTIFIED TECHNICIAN.—The term ‘cer-
9 tified technician’ means—

10 “(A) a registered diagnostic medical
11 sonographer who is certified in obstetrics and
12 gynecology by the American Registry for Diag-
13 nostic Medical Sonography (ARDMS); or

14 “(B) a nurse midwife, or an advanced
15 practice nurse practitioner in obstetrics, with
16 certification in obstetrical ultrasonography.

17 “(4) EMBRYONIC OR FETAL HEARTBEAT.—The
18 term ‘embryonic or fetal heartbeat’ means embryonic
19 or fetal cardiac activity or the steady and repetitive
20 rhythmic contraction of the embryonic or fetal heart.

21 “(5) UNBORN CHILD.—The term ‘unborn child’
22 means a member of the species homo sapiens, at any
23 stage of development prior to birth.

24 “(6) UNEMANCIPATED MINOR.—The term
25 ‘unemancipated minor’ means a minor who is sub-

1 ject to the control, authority, and supervision of his
 2 or her parents or guardians, as determined under
 3 the law of the State in which the minor resides.

4 “(7) WOMAN.—The term ‘woman’ means a fe-
 5 male human being whether or not she has reached
 6 the age of majority.

7 **“SEC. 3402. REQUIREMENT OF INFORMED CONSENT.**

8 “(a) REQUIREMENT OF COMPLIANCE BY PRO-
 9 VIDERS.—Any abortion provider in or affecting interstate
 10 or foreign commerce, who knowingly performs any abor-
 11 tion, shall comply with the requirements of this title.

12 “(b) PERFORMANCE AND REVIEW OF
 13 ULTRASOUND.—

14 “(1) REQUIREMENT.—Prior to a woman giving
 15 informed consent to having any part of an abortion
 16 performed, the abortion provider who is to perform
 17 the abortion, a certified technician, or another agent
 18 of the abortion provider who is competent in
 19 ultrasonography shall—

20 “(A) perform an obstetric ultrasound on
 21 the pregnant woman;

22 “(B) during the performance of the
 23 ultrasound, display the ultrasound images (as
 24 described in paragraph (2)) so that the preg-
 25 nant woman may view the images; and

1 “(C) provide a medical description of the
2 ultrasound images of the unborn child’s cardiac
3 activity, if present and viewable.

4 “(2) QUALITY OF ULTRASOUND IMAGES.—To
5 be displayed in accordance with paragraph (1)(B),
6 ultrasound images shall—

7 “(A) be of a quality consistent with stand-
8 ard medical practice;

9 “(B) contain the dimensions of the unborn
10 child; and

11 “(C) accurately portray the presence of ex-
12 ternal members and internal organs, if present.

13 “(3) ABILITY TO AVERT EYES.—Nothing in this
14 section shall be construed to prevent a pregnant
15 woman from closing or averting her eyes from the
16 ultrasound images required to be displayed, or not
17 listening to the description of the images required to
18 be given, by the provider or the provider’s agent
19 pursuant to paragraph (1).

20 “(c) AUDIBLE EMBRYONIC OR FETAL HEART-
21 BEAT.—

22 “(1) REQUIREMENT.—Prior to a woman giving
23 informed consent to having any part of an abortion
24 performed, if the pregnancy is at least 8 weeks after
25 fertilization (10 weeks from the first day of the last

1 menstrual period), the abortion provider who is to
2 perform the abortion, a certified technician, or an-
3 other agent of the abortion provider shall, using a
4 hand-held Doppler fetal monitor, make the embry-
5 onic or fetal heartbeat of the unborn child audible
6 for the pregnant woman to hear.

7 “(2) UNSUCCESSFUL ATTEMPTS AT DETECTING
8 HEARTBEAT.—An abortion provider, a certified tech-
9 nician, or another agent of the abortion provider
10 shall not be in violation of paragraph (1) if—

11 “(A) the provider, certified technician, or
12 agent has attempted, consistent with standard
13 medical practice, to make the embryonic or fetal
14 heartbeat of the unborn child audible for the
15 pregnant woman to hear using a hand-held
16 Doppler fetal monitor;

17 “(B) that attempt does not result in the
18 heartbeat being made audible; and

19 “(C) the provider has offered to attempt to
20 make the heartbeat audible at a subsequent
21 date.

22 “(3) ABILITY TO NOT LISTEN.—Nothing in this
23 section shall be construed to prevent the pregnant
24 woman from not listening to the sounds detected by

1 the hand-held Doppler fetal monitor, pursuant to
2 paragraph (1).

3 **“SEC. 3403. EXCEPTION FOR MEDICAL EMERGENCIES.**

4 “(a) EXCEPTION.—The provisions of section 3402
5 shall not apply to an abortion provider in the case that
6 the abortion is necessary to save the life of a mother whose
7 life is endangered by a physical disorder, physical illness,
8 or physical injury, including a life-endangering physical
9 condition caused by or arising from the pregnancy itself.

10 “(b) CERTIFICATION.—

11 “(1) IN GENERAL.—Upon a determination by
12 an abortion provider under subsection (a) that an
13 abortion is necessary to save the life of a mother,
14 such provider shall certify the specific medical condi-
15 tions that support such determination and include
16 such certification in the medical file of the pregnant
17 woman.

18 “(2) FALSE STATEMENTS.—An abortion pro-
19 vider who knowingly or recklessly falsifies a certifi-
20 cation under paragraph (1) is deemed to have know-
21 ingly or recklessly failed to comply with this title for
22 purposes of section 3404.

23 **“SEC. 3404. PENALTIES.**

24 “(a) IN GENERAL.—An abortion provider who know-
25 ingly or recklessly fails to comply with any provision of

1 this title shall be subject to civil penalties in accordance
2 with this section in an appropriate Federal court.

3 “(b) COMMENCEMENT OF ACTION.—The Attorney
4 General may commence a civil action under this section.

5 “(c) FIRST OFFENSE.—Upon a finding by a court
6 that a respondent in an action commenced under this sec-
7 tion has knowingly or recklessly violated a provision of this
8 title, the court shall notify the appropriate State medical
9 licensing authority and shall assess a civil penalty against
10 the respondent in an amount not to exceed \$100,000 for
11 each such violation.

12 “(d) SECOND AND SUBSEQUENT OFFENSES.—Upon
13 a finding by a court that the respondent in an action com-
14 menced under this section has knowingly or recklessly vio-
15 lated a provision of this title, the court shall notify the
16 appropriate State medical licensing authority and shall as-
17 sess a civil penalty against the respondent in an amount
18 not to exceed \$250,000 for each such violation if the re-
19 spondent has been found in a prior civil action to have
20 knowingly or recklessly committed another violation of a
21 provision of this title.

22 “(e) PRIVATE RIGHT OF ACTION.—A woman upon
23 whom an abortion has been performed in violation of this
24 title, or the parent or legal guardian of such a woman if
25 she is an unemancipated minor, may commence a civil ac-

1 tion against the abortion provider for any knowing or reck-
2 less violation of this title for actual and punitive dam-
3 ages.”.

4 **SEC. 4. PREEMPTION.**

5 Nothing in this Act or the amendments made by this
6 Act shall be construed to preempt any provision of State
7 law to the extent that such State law establishes, imple-
8 ments, or continues in effect greater disclosure require-
9 ments regarding abortion than those provided under this
10 Act and the amendments made by this Act.

11 **SEC. 5. SEVERABILITY.**

12 If any provision of this Act, an amendment by this
13 Act, or the application of such provision or amendment
14 to any person or circumstance is held to be unconstitu-
15 tional, the remainder of this Act and the amendments
16 made by this Act, and the application of the provisions
17 of such remainder to any person or circumstance, shall
18 not be affected thereby.

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